

REMARKS

The Office Action mailed April 13, 2009, has been received and reviewed. Each of claims 1, 2, 5, 7, 8 and 11-21 stands rejected. Claims 1, 7, 11, and 18 have been amended herein. Support for the present amendments can be found in the Specification at paragraphs [0022],[0025], and [0027]. Care has been exercised to introduce no new subject matter. Reconsideration of the above-identified application in view of the above amendments and the following remarks is respectfully requested.

Rejections based on 35 U.S.C. § 103

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some reason, or suggestion or motivation found either in the prior art references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the prior art reference or to combine prior art reference teachings to produce the claimed invention. *See, Application of Bergel*, 292 F. 2d 955, 956-957 (1961). Thus, in order “[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves

or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success [in combining the references]. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” See MPEP § 2143. Recently, the Supreme Court elaborated, at pages 13-14 of *KSR*, it will be necessary for [the Office] to look at interrelated teachings of multiple [prior art references]; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by [one of] ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the [patent application].” *KSR v. Teleflex*, 127 S. Ct. 1727 (2007).

Claims 1, 2, 5, 7, 8 and 11-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner (U.S. Patent No. 6,092,102, hereafter Wagner) in view of Menschik et al. (U.S. Publication No. 2004/0034550, hereinafter Menschik). As the asserted combination of references fails to teach or suggest each and every of the limitations set forth in the rejected claims, Applicants respectfully traverse these rejections, as hereinafter set forth.

Independent claim 1, as amended herein, is generally directed to a computerized system for managing the communication of a laboratory result to a person placing a laboratory order. The system comprises a laboratory information system data store storing clinical laboratory results for clinical laboratory orders, an electronic medical record data store storing clinical event information, and a results posting module communicating with the laboratory information system data store and electronic medical record data store. The results posting module is configured to publish clinical laboratory results from the laboratory information system data store to the electronic medical data store. Also, the results posting module publishes

the clinical laboratory results directly from the laboratory information system data store to the electronic medical records data store. The system also includes a callback module for selectively identifying a clinical laboratory result posted in the electronic medical record data store and for requiring a communication directly from the electronic medical record data store to the person placing the laboratory order for the selected clinical laboratory result. The callback module selectively identifies the clinical laboratory result requiring communication based on, a comparison of the laboratory result and a clinical range relevant to the laboratory result, and information about the clinical laboratory order.

Amended independent claim 7 recites a method in a computer environment of managing the communication of a laboratory result to a person placing a laboratory order. The method includes: accessing a laboratory information system data store containing a plurality of laboratory results; posting the laboratory results from the laboratory information system data store to an electronic medical records data store; analyzing the clinical laboratory order for the clinical laboratory results; comparing the laboratory result posted in the electronic medical record data store to a clinical range relevant to the laboratory result; selectively identifying a clinical laboratory result requiring a communication to the person placing the laboratory order; and communicating the clinical laboratory result requiring communication directly from the electronic medical record data store to the person placing the laboratory order.

Applicants respectfully submit that none of the references, taken singularly or in combination, teach or suggest the combination of a system for managing the communication of a laboratory results to a person placing a laboratory order involving publishing the clinical laboratory results directly from the laboratory information system data store to an electronic medical records data store. Furthermore the references fail to disclose selectively

communicating particular clinical laboratory results directly from the electronic medical record data store to the person placing the laboratory order.

In contrast to the inventions of claims 1 and 7, the Wagner reference discloses a system and method for notifying users about information or events of an enterprise by incorporating user preferences for communication channels to communicate a message as a function of the message, such as based on the message type. *See generally, Wagner* at col. 3, lines 31-34. In Wagner an information processing system receives information from a data generation sub-system such as a laboratory information systems and sends the information to a clinical event monitor which analyzes the information and creates an alert “including message data structure and delivery instructions” and sends the alert to a notifier function. *Id.* at col. 7, lines 37-48. The notifier function of Wagner the selects the communication channel preferred by a user to communicate the message from the event monitor. *Id.* at 6, lines 40-44.

It is respectfully submitted that Wagner fails to disclose selectively identifying a clinical laboratory result *posted in the electronic medical record data store* and communicating the identified laboratory result *directly from the electronic medical record data store* to the person placing the laboratory order for the selected clinical laboratory result. Instead, in Wagner, an event monitor analyzes laboratory information received from a laboratory information system and generates a message containing “an interpretation of the result” and delivery instructions for the message. *Id.* at 7, lines 48-51. Nowhere does the Wagner reference disclose communicating a selected clinical laboratory result directly from the electronic medical record data store to the person placing the laboratory order. Applicants respectfully point out that merely sending an interpretation of a laboratory result does not equate to determining

whether a laboratory result stored in a patients electronic medical records requires communication to a clinician and communicating the actual laboratory results to the clinician.

In addition, Wagner fails to disclose posting clinical laboratory results directly from a laboratory information system data store to an electronic medical records data store as described in claims 1 and 7. The Office acknowledges the inadequate disclosure of an electronic medical record data store in Wagner. *See Office Action* at p. 6. As such, Applicants respectfully submit that the Wagner reference fails to disclose posting clinical laboratory results directly to an electronic medical records data store and selectively communicating the posted results from the electronic medical record data store to the person requesting the laboratory results.

The Menschik reference is directed to a method for creating a secure, centrally-mediated, peer-to-peer network of healthcare providers requiring no pre-existing affiliations of each other. *See Menschik* at ¶ [0027]. It is respectfully submitted that Menschik fails to cure the deficiencies of Wagner. The Menschik reference does not teach, selectively identifying a clinical laboratory result *posted in the electronic medical record data store* and communicating the identified laboratory result *directly from the electronic medical record data store* to the person placing the laboratory order for the selected clinical laboratory result as described in the invention of claims 1 and 7. Menschik merely discusses an electronic medical record system that permits healthcare providers to enter clinical observations and retrieve patient notes and charts, while a clinical data repository provides storage for patient records. *Id.* at ¶ [0092]. The invention of claims 1 and 7 includes communicating a selected clinical laboratory result directly from the electronic medical record data store to the person placing the laboratory order. Nowhere does Menschik disclose identifying laboratory results posted in an electronic medical

data store requiring communication to a clinician and communicating the identified laboratory results to the clinician *directly* from the electronic medical data store.

With continued reference to claims 1 and 7, Applicants respectfully submit that the Menschik reference does not describe a results posting module that publishes the clinical laboratory results directly from the laboratory information system data store to the electronic medical records data store. Instead the Menschik reference discloses a system with “a series of software programs indicated as ‘brokers’ for communicating with various hospital facilities.” *Id.* at ¶ [0094]. The absence of a description in Menschik for posting laboratory results *directly* from the laboratory information system data store to the electronic medical records data store prevents Menschik from disclosing a system for managing the communication of a laboratory result to a person placing a laboratory order in the same manner as the invention of claims 1 and 7.

As the Wagner reference in view of the Menschik reference fails to teach or suggest all the limitations of the independent claims 1 and 7, a *prima facie* case of obviousness has not been made for independent claims 1 and 7 with respect to these references. Accordingly, Applicants respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of these claims.

Claims 2-6, and 8-10 depend respectively from independent claims 1 and 7. As such, Applicants respectfully submit that claims 2-10 are patentable over the Wagner and Menschik reference for at least the above reasons.

Independent claim 11, as amended herein, is directed to a method in a computing environment for communicating a laboratory result to a person placing a laboratory order. The method includes: accessing a data store containing a plurality of clinical laboratory results; accessing an electronic medical record data store containing clinical event information; posting

the plurality of clinical laboratory results to the electronic medical record data store; selectively identifying directly from the electronic medical record data store a clinical laboratory result requiring communication to the person placing the laboratory order for the selected clinical laboratory result based on, a comparison of the laboratory result and a clinical range relevant to the laboratory result, and information about the clinical laboratory order; identifying a first preferred notification method for the selected laboratory result; and automatically generating a communication of the selected laboratory result by the first preferred method directly from the electronic medical record data store to the person placing the laboratory order.

As amended, independent claim 18 is directed to a method in a computing environment for communicating a laboratory result to a person placing a laboratory order including: accessing a data store containing a plurality of clinical laboratory results; accessing an electronic medical record data store containing clinical event information; posting the plurality of clinical laboratory results to the electronic medical record data store; selectively identifying directly from the electronic medical record data store a clinical laboratory result requiring communication to the person placing the laboratory order for the selected clinical laboratory result based on, a comparison of the laboratory result and a clinical range relevant to the laboratory result, and information about the clinical laboratory order; identifying a first preferred notification method for the selected laboratory result from a plurality of notification methods; identifying a number of conditions for the preferred method; and if the conditions are satisfied, automatically generating a communication of the laboratory result by the first preferred method directly from the electronic medical record data store to the person placing the laboratory order.

In contrast to the inventions of claims 11 and 18, the Wagner reference discloses a system and method for notifying users about information or events of an enterprise by

incorporating user preferences for communication channels to communicate a message as a function of the message, such as based on the message type. *See generally, Wagner* at col. 3, lines 31-34. In *Wagner* an information processing system receives information from a data generation sub-system such as a laboratory information systems and sends the information to a clinical event monitor which analyzes the information and creates an alert “including message data structure and delivery instructions” and sends the alert to a notifier function *Id.* at col. 7, lines 37-48. The notifier function of *Wagner* the selects the communication channel preferred by a user to communicate the message from the event monitor. *Id.* at 6, lines 40-44.

It is respectfully submitted that *Wagner* fails to disclose selectively identifying a clinical laboratory result *posted in the electronic medical record data store* and communicating the identified laboratory result *directly from the electronic medical record data store* to the person placing the laboratory order for the selected clinical laboratory result as described in claims 11 and 18. Instead, in *Wagner*, an event monitor analyzes laboratory information received from a laboratory information system and generates a message containing “an interpretation of the result” and delivery instructions for the message. *Id.* at 7, lines 48-51. Nowhere does the *Wagner* reference disclose communicating a selected clinical laboratory result directly from the electronic medical record data store to the person placing the laboratory order. Applicants respectfully point out that merely sending an interpretation of a laboratory result does not equate to determining whether a laboratory result stored in a patient's electronic medical records requires communication to a clinician and communicating the actual laboratory results to the clinician. As such, Applicants respectfully submit that the *Wagner* reference fails to disclose posting clinical laboratory results directly to an electronic medical records data store and

selectively communicating the posted results from the electronic medical record data store to the person requesting the laboratory results.

The Menschik reference is directed to a method for creating a secure, centrally-mediated, peer-to-peer network of healthcare providers requiring no pre-existing affiliations of each other. *See Menschik* at ¶ [0027]. It is respectfully submitted that Menschik fails to cure the deficiencies of Wagner. The Menschik reference does not teach, selectively identifying a clinical laboratory result *posted in the electronic medical record data store* and communicating the identified laboratory result *directly from the electronic medical record data store* to the person placing the laboratory order for the selected clinical laboratory result as described in the invention of claims 11 and 18. Menschik merely discusses an electronic medical record system that permits healthcare providers to enter clinical observations and retrieve patient notes and charts, while a clinical data repository provides storage for patient records. *Id.* at ¶ [0092]. Nowhere does Menschik disclose identifying laboratory results posted in an electronic medical data store requiring communication to a clinician and communicating the identified laboratory results to the clinician *directly* from the electronic medical data store.

In addition, Applicants respectfully submit that the Menschik reference does not describe a results posting module that publishes the clinical laboratory results directly from the laboratory information system data store to the electronic medical records data store. Instead the Menschik reference discloses a system with “a series of software programs indicated as ‘brokers’ for communicating with various hospital facilities.” *Id.* at ¶ [0094]. The absence of a description in Menschik for posting laboratory results *directly* from the laboratory information system data store to the electronic medical records data store prevents Menschik from disclosing

a system for managing the communication of a laboratory result to a person placing a laboratory order in the same manner as the invention of claims 11 and 18.

As the Wagner reference in view of the Menschik reference fails to teach or suggest all the limitations of the independent claims 11 and 18, a *prima facie* case of obviousness has not been made for independent claims 11 and 18 with respect to these references. Accordingly, Applicants respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of these claims.

Claims 12-17, and 19-21 depend respectively from independent claims 1 and 7. As such, Applicants respectfully submit that claims 12-17, and 19-21 are patentable over the Wagner and Menschik reference for at least the above reasons.

CONCLUSION

For at least the reasons stated above, claims 1, 2, 5, 7-8, and 11-21 are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or jdickman@shb.com (such communication via email is herein expressly granted) – to resolve the same.

REQUEST FOR EXTENSION OF TIME

It is hereby requested that the time period for responding to the outstanding Office Action mailed April 13, 2009, be extended for two months or until September 13, 2009. The Petition fee of \$490 is being submitted simultaneously with this paper by way of electronic payment.

In the event it is determined necessary, the Commissioner is hereby authorized to charge any additional fee which may be required, or credit any overpayment, to Deposit Account No. 19-2112.

Respectfully submitted,

/Jean M. Dickman/

Jean M. Dickman
Reg. No. 48,538

JMG/tq
SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108-2613
816-474-6550